



SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

RIN 3245–AG84

Small Business Size Standards; Adoption of 2017 North American Industry

Classification System for Size Standards

AGENCY: U.S. Small Business Administration.

ACTION: Proposed rule.

SUMMARY: The U.S. Small Business Administration (SBA) proposes to amend its small business size regulations to incorporate the U.S. Office of Management and Budget's (OMB) North American Industry Classification System (NAICS) revision for 2017, identified as NAICS 2017, into its table of small business size standards.

NAICS 2017 created 21 new industries by reclassifying, combining, or splitting 29 existing industries under changes made to NAICS in 2012 (NAICS 2012). SBA's proposed size standards for these 21 new industries have resulted in an increase to size standards for six NAICS 2012 industries and part of one industry, a decrease to size standards for two, a change in the size standards measure from average annual receipts to number of employees for one, and no change in size standards for twenty industries and part of one industry. SBA proposes to adopt the updated table of size standards, effective October 1, 2017

DATES: SBA must receive comments to this proposed rule on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Identify your comments by RIN 3245-AG84 and submit them by one of the following methods: (1) Federal eRulemaking Portal: *www.regulations.gov*, following the instructions for submitting comments; or (2) Mail/Hand Delivery/Courier: Khem R. Sharma, Ph.D., Chief, Office of Size Standards, 409 Third Street, SW, Mail Code 6530, Washington, DC 20416. SBA will not accept comments to this proposed rule submitted by email. SBA will post all comments to this proposed rule on *www.regulations.gov*.

If you wish to submit confidential business information (CBI) as defined in the User Notice at *www.regulations.gov*, you must submit such information to U.S. Small Business Administration, Khem R. Sharma, Ph.D., Chief, the Office of Size Standards, 409 Third Street, SW, Mail Code 6530, Washington, DC 20416, or send an email to *sizestandards@sba.gov*. Highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review your information and determine whether it will make the information public.

Requests to redact or remove posted comments cannot be honored and a request to redact or remove posted comments will be posted as a comment. See the *www.regulations.gov* help section for information on how to make changes to your comments.

FOR FURTHER INFORMATION CONTACT: Dr. Jorge Laboy-Bruno, Office of Size Standards, (202) 205-6618 or *sizestandards@sba.gov*.

SUPPLEMENTARY INFORMATION: Effective October 1, 2000, SBA adopted NAICS 1997 industry definitions as a basis for its table of small business size standards, replacing the 1987 Standard Industrial Classification (SIC) (65 FR 30836 (May 15, 2000)). Since then, OMB has issued four revisions to NAICS. SBA's table of size

standards adopted the OMB's first revision, NAICS 2002, effective October 1, 2002 (67 FR 52597 (August 13, 2002)), the second revision, NAICS 2007, effective October 1, 2007 (72 FR 49639 (August 29, 2007)), and the third revision, NAICS 2012, effective October 1, 2012 (77 FR 49991 (August 20, 2012)).

OMB published its fourth and latest revision, NAICS 2017, "Notice of NAICS 2017 final decisions" in the *Federal Register* on August 8, 2016 (81 FR 52584). The OMB notice stated that Federal statistical establishment data published for reference years beginning on or after January 1, 2017, should be published using NAICS 2017. SBA proposes to adopt NAICS 2017 for its table of size standards, effective October 1, 2017.

As with the previous NAICS revisions, SBA also proposes to adopt the latest NAICS revision, NAICS 2017, effective October 1, 2017 or the beginning of the new fiscal year following the OMB's release of the NAICS revision for several reasons:

(1) Federal government contracting data and related statistics will be more consistent and comparable with past data for analyzing future small business activity if implementation of the revised table of size standards occurs at the beginning of a fiscal year; (2) users of size standards, for instance, Federal prime contractors for developing their subcontracting plans, can have more consistent data to examine the past and future Federal contracting trends; and (3) small business size standards apply to most Federal agencies and their programs involving small businesses; with a time lag between the OMB's effective date and SBA's update to its size standards they will have time to implement the changes and develop training tools, if necessary.

Changes in NAICS 2017

NAICS 2017 created 21 new NAICS industries by reclassifying, splitting, or merging 29 industries or their parts under NAICS 2012. Of those 21 new industries, five were created by merging two or more of thirteen NAICS 2012 industries in their entirety, while three were created by combining part of one industry with another industry. Three new industries were created by splitting two industries to two parts each with one part of each industry defined as a separate industry and combining other parts of the two industries to form a separate new industry. One new industry was formed by designating part of one industry as a separate industry. OMB also changed 6-digit NAICS codes for eight industries without changing their definitions and titles and amended the title of one industry without changing its 6-digit code. Table 1, “NAICS 2012 Industries or Their Parts Matched to NAICS 2017 Industries,” below, shows the changes from NAICS 2012 to NAICS 2017.

Complete information on the relationship between NAICS 2012 and NAICS 2017 is available on the U.S. Bureau of the Census (Census Bureau) web site at <http://www.census.gov/eos/www/naics/>. The Census Bureau’s web site also provides detailed documentation on Federal notices involving the replacement of SIC with NAICS, and all subsequent NAICS updates and revisions, including the August 8, 2017 “Notice of NAICS 2017 final decisions,” as well as concordances (i.e., correspondence tables) between SIC and NAICS 1997 and NAICS 2002, and between subsequent NAICS revisions.

Table 1
NAICS 2012 Industries or Their Parts Matched to NAICS 2017 Industries

NAICS 2012 code	NAICS 2012 industry title	Status code	NAICS 2017 code	NAICS 2017 industry title
211111	Crude Petroleum and Natural Gas Extraction			
	<i>crude petroleum extraction</i>		211120	Crude Petroleum Extraction
	<i>natural gas extraction</i>	pt.	211130	Natural Gas Extraction
211112	Natural Gas Liquid Extraction	pt.	211130	Natural Gas Extraction
212231	Lead Ore and Zinc Ore Mining	pt.	212230	Copper, Nickel, Lead, and Zinc Mining
212234	Copper Ore and Nickel Ore Mining	pt.	212230	Copper, Nickel, Lead, and Zinc Mining
333911	Pump and Pumping Equipment Manufacturing	pt.	333914	Measuring, Dispensing, and Other Pumping Equipment Manufacturing
333913	Measuring and Dispensing Pump Manufacturing	pt.	333914	Measuring, Dispensing, and Other Pumping Equipment Manufacturing
335221	Household Cooking Appliance Manufacturing	pt.	335220	Major Household Appliance Manufacturing
335222	Household Refrigerator and Home Freezer Manufacturing.	pt.	335220	Major Household Appliance Manufacturing
335224	Household Laundry Equipment Manufacturing	pt.	335220	Major Household Appliance Manufacturing
335228	Other Major Household Appliance Manufacturing	pt.	335220	Major Household Appliance Manufacturing
452111	Department Stores (except Discount Department Stores).	pt.	452210	Department Stores
452112	Discount Department Stores			
	<i>insignificant perishable grocery sales</i>	pt.	452210	Department Stores
	<i>significant perishable grocery sales</i>	pt.	452311	Warehouse Clubs and Supercenters.

NAICS 2012 code	NAICS 2012 industry title	Status code	NAICS 2017 code	NAICS 2017 industry title
452910	Warehouse Clubs and Supercenters	pt.	452311	Warehouse Clubs and Supercenters.
452990	All Other General Merchandise Stores	nc.	452319	All Other General Merchandise Stores
454111	Electronic Shopping	pt.	454110	Electronic Shopping and Mail-Order Houses.
454112	Electronic Auctions	pt.	454110	Electronic Shopping and Mail-Order Houses.
454113	Mail-Order Houses	pt.	454110	Electronic Shopping and Mail-Order Houses.
512210	Record Production	pt.	512250	Record Production and Distribution.
512220	Integrated Record Production/Distribution	pt.	512250	Record Production and Distribution.
517110	Wired Telecommunications Carriers	nc.	517311	Wired Telecommunications Carriers
517210	Wireless Telecommunications Carriers (except Satellite).	nc.	517312	Wireless Telecommunications Carriers (except Satellite).
532220	Formal Wear and Costume Rental	nc.	532281	Formal Wear and Costume Rental
532230	Video Tape and Disc Rental	nc.	532282	Video Tape and Disc Rental
532291	Home Health Equipment Rental	nc.	532283	Home Health Equipment Rental.
532292	Recreational Goods Rental	nc.	532284	Recreational Goods Rental.
532299	All Other Consumer Goods Rental	nc.	532289	All Other Consumer Goods Rental

NAICS 2012 code	NAICS 2012 industry title	Status code	NAICS 2017 code	NAICS 2017 industry title
541711	Research and Development in Biotechnology			
	<i>nanobiotechnologies research and experimental development laboratories</i>	pt.	541713	Research and Development in Nanotechnology
	<i>except nanobiotechnologies research and experimental development laboratories</i>		541714	Research and Development in Biotechnology (except Nanobiotechnology)
541712	Research and Development in the Physical, Engineering, and Life Sciences (except Biotechnology)			
	<i>nanotechnology research and experimental development laboratories</i>	pt.	541713	Research and Development in Nanotechnology
	<i>except nanotechnology research and experimental development laboratories</i>		541715	Research and Development in the Physical, Engineering, and Life Sciences (except Nanotechnology and Biotechnology).
721310	Rooming and Boarding Houses	nt.	721310	Rooming and Boarding Houses, Dormitories, and Workers' Camps

Key to Abbreviations

pt. = Part of 2017 industry.

nc. = 6-digit NAICS codes changed without changing industries' definitions and titles.

nt. = NAICS industry title amended without changing the 6-digit code.

Proposed Size Standards for New Industries in NAICS 2017

On October 22, 1999, SBA proposed to replace SIC with NAICS 1997 as the basis of industry definitions for its table of small business size standards (64 FR 57188). The proposed rule included a set of guidelines or rules that SBA applied to convert the size standards for industries under SIC to NAICS. The guidelines aimed to minimize the impact of applying a new industry classification system on SBA's size standards and on small businesses that qualified as small under the SIC based size standards. SBA received no negative comments against the proposed guidelines. SBA published its final rule on May 15, 2000 (65 FR 30386) (corrected on September 5, 2000, 65 FR 53533) adopting the resulting table of size standards based on NAICS 1997, as proposed. To be consistent, SBA used the same guidelines when it updated its table of size standards to adopt NAICS 2002, NAICS 2007, and NAICS 2012 revisions. In those updates as well, SBA received no adverse comments on using those guidelines, or on the resulting changes to the size standards. For this proposed rule to adopt NAICS 2017 for its size standards table, SBA has also generally followed the same guidelines. The guidelines that are applicable to this update are shown below in Table 2, "General Guidelines to Establish Size Standards for New Industries under NAICS 2017."

Table 2
General Guidelines to Establish Size Standards for New Industries under
NAICS 2017

	<u>If the NAICS 2017 industry is composed of:</u>	<u>The size standard for the NAICS 2017 industry code will be:</u>
1	A single NAICS 2012 industry or part of a single NAICS 2012 industry	The same size standard as for the NAICS 2012 industry or part.

2	Two or more NAICS 2012 industries; two or more parts of an NAICS 2012 industry; parts of two or more NAICS 2012 industries; or one or more NAICS 2012 industries and part(s) of one or more NAICS 2012 industries, and	
	2a. they all have the same size standard	The same size standard as for the NAICS 2012 industries or parts.
	2b. they all have the same size measure (<i>e.g.</i> , receipts, employees, <i>etc.</i>) but do not all have the same size standard	The same size standard as for the NAICS 2012 industry or part that most closely matches the economic activity described by the NAICS 2017 industry, or The highest size standard among the NAICS 2012 industries and part(s) that comprise the NAICS 2017 industry, provided that the highest size standard does not include dominant or potentially dominant firms.
	2c. they have different size measures (<i>i.e.</i> , for example, some are based on receipts and others on employees) and hence do not all have the same size standard	The same size standard as for the NAICS 2012 industry or part that most closely matches the economic activity described by the NAICS 2017 industry, or The highest size standard among the NAICS 2012 industries and part(s) that comprise the NAICS 2017 industry, provided that the highest size standard does not include dominant or potentially dominant firms. To apply this rule, SBA converts all size standards to a single measure (<i>e.g.</i> , receipts, employees, <i>etc.</i>) using the size measure for the NAICS 2012 industry or part(s) that most closely match the economic activity described by the NAICS 2017 industry or using the size measure that applies to most of the NAICS industries or parts comprising the NAICS 2017 industry.

In addition to the above general guidelines, in cases where a new industry is formed by merging multiple industries or their parts with substantially different levels or different measures of size standards, in this proposed rule to adopt NAICS 2017, SBA has also examined the relevant latest industry and Federal procurement data to determine

an appropriate size standard for the new industry. Developed based on the above guidelines and analyses of the relevant data, where necessary, SBA's proposed size standards for the new industries under NAICS 2017 are shown in Table 3, "Proposed Size Standards for New Industries in NAICS 2017." Also shown in the table are the current size standards for the affected NAICS 2012 industries and their parts.

As shown in Table 3, the size standards for most of the affected NAICS 2012 industries are not impacted and therefore remain unchanged under NAICS 2017. The majority of the changes consist of revisions to industry codes or titles, or mergers of two or more NAICS 2012 industries or their parts to new industries without impacting their size standards. Of the 29 NAICS 2012 industries affected by the revision, adopting NAICS 2017 would increase size standards for six industries and part of one industry and decrease two. Size standards for twenty industries and part of one industry would not change. This would also result in changing the size standard measure for one industry from average annual receipts to number of employees.

As stated previously, SBA generally applied the guidelines in Table 2 to convert the size standards for industries from NAICS 2012 to NAICS 2017. However, for new industries that were created by combining industries or their parts with significantly different size standards or different measures of size standards, SBA also evaluated the relevant industry and Federal procurement data to determine appropriate size standards for the new industries, as discussed below.

Table 3
Proposed Size Standards for New Industries in NAICS 2017

NAICS 2012 code	NAICS 2012 industry title	Current size standard (employees)	Current size standard (\$ million)	Proposed NAICS 2017 size standard (employees)	Proposed NAICS 2017 size standard (\$ million)	NAICS 2017 code	NAICS 2017 industry title
211111	Crude Petroleum and Natural Gas Extraction	1,250					
	<i>crude petroleum extraction</i>	1,250		1,250		211120	Crude Petroleum Extraction
	<i>natural gas extraction</i>	1,250		1,250		211130	Natural Gas Extraction
211112	Natural Gas Liquid Extraction	750					
212231	Lead Ore and Zinc Ore Mining	750		750		212230	Copper, Nickel, Lead, and Zinc Mining
212234	Copper Ore and Nickel Ore Mining	1,500					
333911	Pump and Pumping Equipment Manufacturing	750		750		333914	Measuring, Dispensing, and Other Pumping Equipment Manufacturing
333913	Measuring and Dispensing Pump Manufacturing	750					

NAICS 2012 code	NAICS 2012 industry title	Current size standard (employees)	Current size standard (\$ million)	Proposed NAICS 2017 size standard (employees)	Proposed NAICS 2017 size standard (\$ million)	NAICS 2017 code	NAICS 2017 industry title
335221	Household Cooking Appliance Manufacturing	1,500		1,500		335220	Major Household Appliance Manufacturing
335222	Household Refrigerator and Home Freezer Manufacturing.	1,250					
335224	Household Laundry Equipment Manufacturing	1,250					
335228	Other Major Household Appliance Manufacturing	1,000					
452111	Department Stores (except Discount Department Stores).		\$32.5		\$32.5	452210	Department Stores
452112	Discount Department Stores		\$29.5				
	<i>insignificant perishable grocery sales</i>		\$29.5				
452112	Discount Department Stores		\$29.5				
	<i>significant perishable grocery sales</i>		\$29.5		\$29.5	452311	Warehouse Clubs and Supercenters
452910	Warehouse Clubs and Supercenters		\$29.5				
452990	All Other General Merchandise Stores		\$32.5		\$32.5	452319	All Other General Merchandise Stores
454111	Electronic Shopping		\$32.5		\$38.5	454110	Electronic Shopping and Mail-Order Houses
454112	Electronic Auctions		\$38.5				
454113	Mail-Order Houses		\$38.5				

NAICS 2012 code	NAICS 2012 industry title	Current size standard (employees)	Current size standard (\$ million)	Proposed NAICS 2017 size standard (employees)	Proposed NAICS 2017 size standard (\$ million)	NAICS 2017 code	NAICS 2017 industry title
512210	Record Production		\$7.5	250		512250	Record Production and Distribution
512220	Integrated Record Production/Distribution	1,250					
517110	Wired Telecommunications Carriers	1,500		1,500		517311	Wired Telecommunications Carriers
517210	Wireless Telecommunications Carriers (except Satellite).	1,500		1,500		517312	Wireless Telecommunications Carriers (except Satellite)
532220	Formal Wear and Costume Rental		\$20.5		\$20.5	532281	Formal Wear and Costume Rental
532230	Video Tape and Disc Rental		\$27.5		\$27.5	532282	Video Tape and Disc Rental
532291	Home Health Equipment Rental		\$32.5		\$32.5	532283	Home Health Equipment Rental
532292	Recreational Goods Rental		\$7.5		\$7.5	532284	Recreational Goods Rental
532299	All Other Consumer Goods Rental		\$7.5		\$7.5	532289	All Other Consumer Goods Rental
541711	Research and Development in Biotechnology	1,000					
	<i>nanobiotechnologies research and experimental development laboratories</i>	1,000		1,000		541713	Research and Development in Nanotechnology
	<i>except nanobiotechnologies research and experimental development laboratories</i>	1,000		1,000		541714	Research and Development in Biotechnology (except Nanobiotechnology)

NAICS 2012 code	NAICS 2012 industry title	Current size standard (employees)	Current size standard (\$ million)	Proposed NAICS 2017 size standard (employees)	Proposed NAICS 2017 size standard (\$ million)	NAICS 2017 code	NAICS 2017 industry title
541712	Research and Development in the Physical, Engineering, and Life Sciences (except Biotechnology)	1,000					
	<i>nanotechnology research and experimental development laboratories</i>	1,000		1,000		541713	Research and Development in Nanotechnology
	<i>except nanotechnology research and experimental development laboratories</i>	1,000		1,000		541715	Research and Development in the Physical, Engineering, and Life Sciences (except Nanotechnology and Biotechnology)
721310	Rooming and Boarding Houses		\$7.5		\$7.5	721310	Rooming and Boarding Houses, Dormitories, and Workers' Camps

Derivation of Proposed Size Standards for Select NAICS 2017 Industries

NAICS 211120, Crude Petroleum Extraction

SBA proposes a 1,250-employee size standard for NAICS 2017 industry 211120 (Crude Petroleum Extraction). This new industry was generated by partitioning NAICS 2012 industry 211111 (Crude Petroleum and Natural Gas Extraction) into Crude Petroleum Extraction and Natural Gas Extraction parts and then redefining the Crude Petroleum Extraction part as new NAICS 211120. The current size standard for NAICS 211111 is 1,250 employees. Based on the 2012 Economic Census data, nearly 99 percent of all firms in NAICS 211111 qualify as small under the 1,250-employee size standard. However, SBA cannot quantify the impact of the partition on the size standard precisely because information on the Crude Petroleum Extraction part of NAICS 211111 is not available in the 2012 Economic Census data. Thus, SBA analyzed the impact of reducing the size standard for NAICS 211111 from 1,250 employees to 1,000 or 750 employees using the 2012 Economic Census data to see if a lower than 1,250 employees could be adopted for new NAICS 211120. The NAICS 211111 data showed that about 10-20 firms would lose their small business status if the size standard was lowered to 750 or to 1,000 employees. Based on the Federal procurement data from the Federal Procurement Data System – Next Generation (FPDS-NG) for fiscal years 2013-2015, SBA estimates that 23 firms involved in crude petroleum extraction (using the “Crude Petroleum Extraction and Others” Product Service Code (PSC)) received a little over \$1 million in Federal contracts annually. Seventeen of those firms had fewer than 1,250 employees, accounting for nearly 60 percent of dollars obligated under that PSC. Thus, using a size standard that is lower than 1,250 employees can hurt those

businesses. Based on these results, SBA proposes a size standard of 1,250 employees for new NAICS 2012 industry 211120, Crude Petroleum Extraction.

NAICS 211130, Natural Gas Extraction

SBA proposes to adopt a 1,250-employee size standard for NAICS 2017 industry 211130 (Natural Gas Extraction). This new industry was generated by merging the Natural Gas Extraction part of NAICS 2012 industry 211111 with NAICS 2012 industry 211112 (Natural Gas Liquid Extraction). The current size standards are 1,250 employees for NAICS 211111 and 750 employees for NAICS 211112. Based on the 2012 Economic Census data, about 70 percent of firms in NAICS 211112 are below the 750-employee size standard. If SBA were to increase the size standard for NAICS 211112 to 1,250 employees, 4-6 additional firms would qualify as small. That would increase the share of small firms in that industry to nearly 75 percent.

Because the 2012 Economic Census data does not provide separate information on firms involved in the Natural Gas Extraction part of NAICS 211111, it is not possible to calculate a precise size standard for new NAICS 211130 using the Economic Census data. Thus, SBA examined Federal procurement data from FPDS-NG for fiscal years 2013-2015. In that period, 55 unique firms received Federal contracts under NAICS 211111. Thirty-four of them were small under the 1,250-employee size standard and received a third of total dollars obligated to that industry. The average annual amount obligated to NAICS 211111 was about \$58 million. Because the partitioning of NAICS 2012 code 211111 divided firms in that industry between Crude Petroleum Extraction (which became NAICS 211120) and Natural Gas Liquid Extraction (which became part of NAICS 211130), SBA examined the Federal procurement data for the two

Product Service Codes (PSCs): Natural Gas Extraction (GAS) and Crude Petroleum Extraction and Others (OTHER THAN GAS).

Thirty-eight firms received contracts under GAS PSC, of which 19 had fewer than 1,250 employees. Of those 19, only one firm would lose its small business status if the 750-employee size standard that currently applies to NAICS 211112 was used as the size standard for NAICS 211130. The GAS PSC category accounted for about 98 percent of total dollars obligated in NAICS 211111, and firms with fewer than 1,250 employees accounted for 33 percent. However, if SBA adopted a size standard of 750 employees for new NAICS 211130, the small business share of total dollars obligated would reduce to 24 percent.

During fiscal years 2013-2015, 62 unique firms received Federal contracts under NAICS 211112. Thirty-nine of them were below the 750-employee size standard and received 38 percent of total contract dollars obligated to that industry. The average annual dollars obligated to NAICS 211112 was about \$1.4 million. Using 1,250 employees as a size standard for NAICS 211130 would enable one currently large firm to qualify as small.

When firms under GAS PSC in NAICS 211111 and those in NAICS 211112 are considered together, 100 unique firms received Federal contracts during fiscal years 2013-2015. Of those 100, 59 had fewer than 1,250 employees, accounting for 33 percent of total dollars obligated in those industries. If SBA were to adopt 750 employees as the size standard for NAICS 211130, the number of firms considered small would decrease from 59 to 57, and the share of dollars obligated to small businesses would decrease from

33 percent to 24 percent. Thus, these results suggest that 1,250 employees is a more appropriate size standard for NAICS 211130 than 750 employees.

Additionally, when a new NAICS 2017 industry consists of one or more NAICS 2012 industries or their part(s) with different size standards, SBA normally adopts the largest size standard for the resulting new industry (see guidelines 2b in Table 2). Accordingly, SBA proposes to adopt a size standard of 1,250 employees for NAICS 211130, Natural Gas Extraction.

NAICS 212230, Copper, Nickel, Lead, and Zinc Mining

SBA proposes to adopt a 750-employee size standard for NAICS 2017 industry 212230 (Copper, Nickel, Lead, and Zinc Mining). NAICS 212230 was formed by merging NAICS 2012 industry 212231 (Lead Ore and Zinc Ore Mining) and NAICS 2012 industry 212234 (Copper Ore and Nickel Ore Mining). The current size standards are 750 employees for NAICS 212231 and 1,500 employees for NAICS 212234. Based on the 2012 Economic Census data, adopting a 1,500-employee size standard for the new industry will result in almost every firm, including potentially dominant ones, qualifying as small in NAICS 212231. In other words, 1,500 employees will be too large a size standard for firms currently operating under NAICS 212231. Similarly, adopting a 750-employee size standard for the new industry will result in only one firm being no longer small in NAICS 212234.

Furthermore, SBA also examined Federal procurement data from FPDS-NG for fiscal years 2013-2015, and found that Federal contracting was not significant in both NAICS 212231 and NAICS 212234. During that period, only one firm with 20 employees received about \$55,000 in Federal contracts in NAICS 212231, and only

two firms (one with seven employees and other with just one employee) received, on average, about \$65,000 in Federal contracts under NAICS 212234.

SBA also examined its loan data for fiscal years 2015-2016 and found that there were no loans granted to firms in both NAICS 212231 and NAICS 212234 during that period.

Given the above results, SBA proposes to adopt a size standard of 750 employees for NAICS 212230, Copper, Nickel, Lead, and Zinc Mining.

NAICS 335220, Major Household Appliance Manufacturing

SBA proposes to adopt 1,500 employees as the small business size standard for NAICS 2017 industry 335220 (Major Household Appliance Manufacturing). This new industry was formed by merging four NAICS 2012 industries as set forth in Table 4, “Formation of Major Household Appliance Manufacturing,” below.

Table 4
Formation of Major Household Appliance Manufacturing

NAICS 2012 code	NAICS 2012 title	Size standard (employees)	NAICS 2017 code	NAICS 2017 title
335221	Household Cooking Appliance Manufacturing	1,500	335220	Major Household Appliance Manufacturing
335222	Household Refrigerator and Home Freezer Manufacturing	1,250		
335224	Household Laundry Equipment Manufacturing	1250		
335228	Other Major Household Appliance Manufacturing	1,000		

Rule 2b in Table 2, above, suggests adopting the size standard that most closely matches the economic activity described by the new NAICS 2017 industry, or adopting

the highest size standard among the NAICS 2012 industries being merged to form the new industry.

To arrive at a proposed size standard of 1,500 employees, SBA evaluated the 2012 Economic Census data for NAICS 2012 5-digit industry 33522 (Major Appliance Manufacturing), which includes information about all firms allocated to any of the four 6-digit NAICS codes that were merged to form NAICS 2017 industry 335220. About 89 percent of all firms in those four industries would qualify as small if SBA set the size standard for NAICS 335220 at 1,000 employees. That percentage would rise to nearly 91 percent at 1,250 employees and 94.5 percent at 1,500 employees.

Analyzing the four NAICS 2012 industries individually shows that the most affected industry by any reduction of the size standard is NAICS 335221 (Household Cooking Appliance Manufacturing), which currently has a size standard of 1,500 employees. If SBA were to use 1,250 employees or 1,000 employees as the size standard for NAICS 335220, four firms currently operating in NAICS 335220 would lose their small business status. More importantly, NAICS 335221 represents about 77 percent of the total number of firms in the new industry. The industry data, therefore, supports adopting the largest size standard among the four NAICS industries being merged into this new NAICS 325220. A lower size standard at 1,250 employees or 1,000 employees would reduce the number of small firms by about 4 percent to 6 percent.

Furthermore, SBA examined the Federal procurement data from FPDS-NG for fiscal years 2013-2015. During that period, 352 unique firms received about \$11 million in Federal contracts annually under the four NAICS 2012 industries being merged to form new NAICS 2017 industry 335220. Of those 352 firms, 320 had fewer than

1,000 employees, accounting for 86.7 percent of dollars obligated in those four industries, 323 had fewer than 1,250 employees with a share of dollars obligated of 87.2 percent, and 327 had fewer than 1,500 employees with a share of dollars obligated of 88.8 percent.

These results show that some firms would be affected if the size standard adopted for the new industry is smaller than 1,500 employees. Accordingly, SBA proposes adopting a size standard of 1,500 employees for new NAICS 2017 industry 335220, Major Appliance Manufacturing.

NAICS 452210, Department Stores

SBA proposes to adopt \$32.5 million as the size standard for NAICS 2017 industry 452210 (Department Stores). This new industry was formed by merging one NAICS 2012 industry and part of another, as set forth in Table 5, “Formation of Department Stores.”

Table 5
Formation of Department Stores

NAICS 2012 code	NAICS 2012 title	Size standard (\$ million)	NAICS 2017 code	NAICS 2017 title
452111	Department Stores (except Discount Department Stores).	\$32.5	452210	Department Stores
452112	Discount Department Stores pt: insignificant perishable grocery sales only	\$29.5		

According to the 2012 County Business Pattern and Economic Census data, 35 firms were below the \$32.5 million size standard in NAICS 452111 and 36 firms were under the \$29.5 million size standard in NAICS 452112. Therefore, based on these data

the impact of adopting either the lower \$29.5 million or the higher \$32.5 million size standard for the new industry would be quite negligible.

In accordance with SBA's regulations (13 CFR 121.402(b)(2)), NAICS codes and their size standards in Sectors 42 (Wholesale Trade) and 44-45 (Retail Trade) do not apply to Federal procurement. Therefore, evaluation of Federal procurement data is not warranted although FPDS-NG shows some Federal contracts awarded using both NAICS 452111 and NAICS 452112. It is more than likely that contracting officers applied the 500-employee nonmanufacturer size standard to establish small business eligibility for such contracts.

Because NAICS codes and their size standards in Sectors 42 and 44-45 primarily apply for SBA's loan programs, SBA examined its loan data for fiscal years 2015-2016. During that period, 24 loans, totaling \$4.6 million, were granted to firms in NAICS 452111. Similarly, 12 loans, totaling \$2.6 million, were approved for firms in NAICS 452112. All of those firms were much smaller than the size standards for the affected industries.

While the industry and program data shows little difference in impacts of adopting either \$29.5 million or \$32.5 million as the size standard for the new industry, in accordance with SBA's general policy of adopting the highest size standard among the merged industries or industry parts, SBA proposes adopting the higher \$32.5 million as the size standard for NAICS 452210, Department Stores.

NAICS 454110, Electronic Shopping and Mail-Order Houses

SBA proposes to adopt \$38.5 million in average annual receipts as the small business size standard for NAICS 2017 industry 454110 (Electronic Shopping and Mail-

Order Houses). This new industry was formed by merging three NAICS 2012 industries as set forth in Table 6, “Formation Electronic Shopping and Mail-Order Houses.”

Table 6
Formation Electronic Shopping and Mail-Order Houses

NAICS 2012 code	NAICS 2012 title	Size standard (\$ million)	NAICS 2017 code	NAICS 2017 title
454111	Electronic Shopping	\$32.5	454110	Electronic Shopping and Mail-Order Houses
454112	Electronic Auctions	\$38.5		
454113	Mail-Order Houses	\$38.5		

Analysis of the 2012 Economic Census data shows that about 27,525 firms were below the \$38.5 million size standard associated with two of the three industries, shown above. If the size standard were to reduce to \$32.5 million, about 80 firms would lose their small business eligibility. Thus, the data supports adopting \$38.5 million as the size standard for the new industry.

For the reason explained under NAICS 452210 (Department Stores), above, the analysis of Federal procurement data is also not warranted for establishing the size standard for NAICS 454110. NAICS codes and their size standards in Sectors 42 and 44-45 primarily apply for SBA’s loan programs. During fiscal years 2015-2016, 468 loans were granted to firms in the three NAICS 2012 industries being merged to form NAICS 454110, with a total loan volume of \$97.8 million. About 94 percent of total loans and 97 percent of total volume went to firms in NAICS 454111.

Based on the ratio of receipts to employees using the 2012 Economic Census data for those three industries, SBA estimates that the \$38.5 million revenue standard is equivalent to 47 employees. Among the firms that received SBA’s loans in fiscal years

2015-2016, only four had more than 47 employees (between 50 and 111 employees).

The Small Business Jobs Act of 2010 (Jobs Act), Pub. L. 111-240, 124 Stat. 504, title 1, subtitle A, part 1, section 1116 (Sep. 27, 2010), established an alternative size standard for SBA's 7(a) and 504 Loan Programs. Specifically, the Jobs Act provides that a firm that does not meet the size standard for its industry may still qualify as small if it has a tangible net worth that does not exceed \$15 million and average net income after Federal income taxes (excluding any carry-over losses) for its preceding two completed fiscal years that does not exceed \$5 million. It is very likely that those four firms qualified for SBA's loans under the alternative size standard.

Based on the above results, SBA proposes \$38.5 million as the small business size standard for NAICS 454110, Electronic Shopping and Mail-Order Houses. This also conforms to SBA's general rule of adopting the highest size standard among the merged industries as the size standard for the new industry.

NAICS 512250, Record Production and Distribution

SBA proposes to adopt a 250-employee size standard for new NAICS 2017 industry 512250 (Record Production and Distribution), formed by combining the NAICS 2012 industry 512210 (Record Production) and NAICS 2012 industry 512220 (Integrated Record Production/Distribution). The current size standards are \$7.5 million in average annual receipts for NAICS 512210 and 1,250 employees for NAICS 512220. Presently, according to the 2012 Economic Census data, at the current \$7.5 million size standard 97.7 percent of all firms in NAICS 512210 qualify as small. Adopting a 1,250-employee size standard for new industry would result in all, but one, firms currently in NAICS 512210 being small. While NAICS 512210 has no firms between 250 employees

and 1,250 employees, NAICS 512220 has three firms in that employee range. A 250-employee size standard for NAICS 512250 would include 99.4 percent of all firms in NAICS 512210 and 97.6 percent of all firms in NAICS 512220.

SBA also examined Federal procurement data for fiscal years 2013-2015 for both NAICS 512210 and 512220. In that period, 37 unique firms received about \$7.8 million annually in Federal contracts under NAICS 512210. Twenty-seven of them were small under the \$7.5 million size standard and 10 were other than small. Of all the small businesses under \$7.5 million, the largest had no more than 80 employees. By adopting a 250-employee size standard for NAICS 512250, three of the 10 firms currently in NAICS 512210 that are above \$7.5 million would qualify as small and seven will remain large. The three qualifying as small would have average annual revenue between \$52 million and \$213 million.

During fiscal years 2013-2015, 13 unique firms received Federal contracts under NAICS 512220. Ten of the awardees were at or below the 1,250-employee standard and three were above. Six of them were below \$7.5 million. If the size standard for NAICS 512250 is set at 250 employees, only two currently small firms under the 1,250-employee size standard in NAICS 512220 will become other than small. On an average annual basis, only about \$174,000 in Federal contract dollars were obligated to NAICS 512220 during that period. With this level of Federal contracting activity, the impact of using a size standard of 250 employees instead of 1,250 employees will be very minimal.

SBA also examined its loan data in these NAICS codes during fiscal years 2015-2016. In NAICS 512210 and 512220 combined, there were fewer than five loans granted each year, with most of the loan recipients having fewer than five employees.

Based on the above results, SBA proposes a size standard of 250 employees for NAICS 512230, Record Production and Distribution.

Evaluation of Dominance in Field of Operation

Section 3(a) of the Small Business Act (15 U.S.C. 632(a)) defines a small business concern as one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets a specific small business definition or size standard established by SBA's Administrator. SBA considers as part of its evaluation whether a business concern at a proposed or revised size standard would be dominant in its field of operation. For this, SBA generally examines the industry's market share of firms at the proposed or revised standard. SBA also examines distribution of firms by size to ensure that a contemplated size standard derived from its size standards analysis excludes the largest firms within an industry. Market share, the size distribution and other factors may indicate whether a firm can exercise a major controlling influence on a national basis in an industry where a significant number of business concerns are engaged. SBA has determined that for the industries for which it has proposed to revise size standards in this rule, no individual firm at or below the proposed size standard will be large enough to dominate its field of operation. At the proposed size standards, the small business share of total industry receipts among those industries for which SBA has revised size standards is, on average, 2.7 percent, ranging from a minimum of 0.01 percent to a maximum of 9.9 percent. SBA determines that these levels of market shares effectively preclude a firm at or below the revised size standards from exerting control on any of the industries.

Alternatives to Adopting NAICS 2017 for Size Standards

SBA considered retaining NAICS 2012 as the basis for its small business size standards. That would, however, lead to inconsistency between SBA's size standards and data published by Federal agencies that will adopt NAICS 2017 for their statistical and other programs. OMB stated in its August 8, 2016 notice that "Federal statistical establishment data published for reference years beginning on or after January 1, 2012, should be published using the 2017 NAICS United States codes." SBA is not a statistical agency, but the Agency uses for its size standards analyses establishment data collected from other Federal agencies, such as the Economic Census data and County Business Patterns from the Census Bureau. If SBA continues using NAICS 2012 for its size standards, it will not be able to analyze and evaluate industry structure adequately and accurately and adjust small business size standards appropriately because the forthcoming Economic Census and County Business Patterns data based on NAICS 2017 will not be compatible with NAICS 2012. That would run counter to the Jobs Act mandate that requires SBA to review all size standards and adjust them appropriately to reflect the current industry and market data every five years.

To establish, review, and revise, where necessary, small business size standards, SBA uses special tabulations of industry data that the Agency obtains from the Census Bureau based on its Economic Census of U.S. industries and businesses and establishment data from its County Business Patterns. Because the 2017 Economic Census will be based on NAICS 2017 industry definitions, it is imperative that SBA use NAICS 2017 as the basis for its table of small business size standards.

Request for Comments

SBA welcomes public comment on this proposed rule. Specifically, SBA invites comments on whether its proposed size standards for new industries are appropriate and suggestions on alternative size standards, along with supporting data and analysis, if proposed size standards are not appropriate. SBA also seeks comments on its methodology for converting size standards from NAICS 2012 to NAICS 2017 and data sources and analyses it used in developing proposed size standards for certain new industries. SBA will thoroughly evaluate and address all comments in preparing the final rule the Agency will publish to adopt NAICS 2017 for its table of size standards.

Justification for the October 1, 2017 Effective Date

SBA's small business size standards matched to NAICS 2017 to be adopted in a forthcoming final rule, will be effective on October 1, 2017 for the following reasons:

1. OMB stated in its August 8, 2016 notice that Federal statistical establishment data published for reference years beginning on or after January 1, 2017, should be published using NAICS 2017. SBA is not a statistical agency, but it uses the establishment data collected from other Federal agencies, such as the Economic Census and County Business Patterns data from the Census Bureau for its size standards analysis. Similarly, Federal procurement databases and systems, such as FPDS-NG and the System for Award Management (SAM), are based on NAICS codes from SBA's table of size standards. If SBA does not adopt NAICS 2017 for its table of size standards in a timely manner, it will result in inconsistency between SBA's size standards and other Federal databases.

2. October 1, 2017 is the start of the new Federal Government fiscal year following OMB's adoption of NAICS 2017 effective January 1, 2017, and is consistent with SBA's adoption of previous NAICS revisions for its size standards effective at the beginning of the new fiscal year after the OMB's effective date.

3. With the adoption of the updated size standards at the start of the new fiscal year, Federal agencies that use NAICS industry definitions and SBA's size standards can collect comparable and consistent data on Federal statistics for program and industry analyses.

4. With the October 1, 2017 effective date, Federal agencies that use SBA's small business size standards for their programs will have sufficient time to plan and implement the updated size standards, and assess the impact of size standards changes on their programs.

Compliance With Executive Orders 12866, 13563, 12988, and 13132, the Paperwork Reduction Act (44 U.S.C., Ch. 35) and the Regulatory Flexibility Act (5 U.S.C. 601-612)

Executive Order 12866

OMB has determined that this proposed rule is not a "significant regulatory action" for purposes of Executive Order 12866. This rule proposes to incorporate the OMB's 2017 revisions of NAICS, which SBA uses to identify industries in the United States for purposes of establishing small business size standards. As discussed in the Supplementary Information above, the size standard of some activities would change because of the NAICS 2017 revisions. However, SBA has determined that virtually all businesses currently defined as small under the NAICS 2012 based size standards will

continue to be small under the NAICS 2017 based size standards. The proposed rule, if adopted in its present form, will also affect other Federal Government programs that provide a benefit for small businesses. SBA welcomes comments describing the impact on small businesses of the size standard changes resulting from this rule. In order to help explain the need of this proposed rule and the rule's potential benefits and costs, SBA is providing below a Cost Benefit Analysis. This is also not a "major rule" under the Congressional Review Act, 5 U.S.C. 800.

Cost Benefit Analysis

1. Is there a need for the regulatory action?

SBA believes that revising its small business size standards based on NAICS 2017 is in the best interests of small businesses. SBA's mission is to aid and assist small businesses through a variety of financial, procurement, business development, and advocacy programs. To assist the intended beneficiaries of these programs effectively, SBA establishes numerical definitions to determine which businesses are deemed small businesses. NAICS 2017 provides the latest industry definitions reflecting the latest changes in industry structure. The Small Business Act (the Act) delegates to SBA's Administrator the responsibility for establishing definitions for small business. The Act also requires that small business definitions vary from industry to industry reflecting differences among the various industries. 15 U.S.C. 632(a). By analyzing and reviewing size standards based on the latest NAICS definitions, SBA can more accurately and appropriately fulfill its mandate. If SBA does not use the latest industry definitions, size standards would not accurately reflect differences among industries. In addition, the Jobs Act requires SBA to review all size standards and make necessary adjustments to reflect

current industry and market conditions at least every five years. To better serve this mandate, SBA needs to evaluate industry data based on the latest NAICS industry definitions available. In this proposed rule, SBA generally followed the same guidelines that the Agency used for adopting prior NAICS revisions, as spelled out under the supplemental information section, above. For certain NAICS 2017 industries involving NAICS 2012 industries with substantially different size standards, SBA also analyzed the relevant industry and program data to determine the size standards for them. Size standards based on NAICS 2017 industry definitions and corresponding data will serve SBA's mission more effectively.

2. What are the potential benefits and costs of this regulatory action?

As stated previously, the vast majority of the changes from NAICS 2012 to NAICS 2017 consist of revisions to industry titles or 6-digit codes or mergers of some NAICS 2012 industries or their parts to form the industries in NAICS 2017 without impacting their size standards. Of the 29 affected NAICS 2012 industries or their parts, SBA's proposed size standards using NAICS 2017, if adopted, will result in increases to size standards for six NAICS 2012 industries and part of one industry, decreases for two industries, and the change of size standard from average annual receipts to number of employees for one industry. The size standards will remain unchanged for other affected industries or parts.

Based on the 2012 Economic Census data for the affected NAICS 2012 industries, SBA estimates that approximately 60 additional businesses would gain small business status under the revised size standards. That represents about 0.1 percent of the number of small businesses in the affected industries. SBA also estimates that fewer than five

firms that qualify as small under current size standards under NAICS 2012 will no longer qualify. However, almost all of those firms do not currently participate in any small business programs.

The benefits of adopting NAICS 2017 and the resulting revisions to size standards, if adopted, will accrue to three groups in the following ways: (1) Some businesses that are above their current size standards may gain small business status, thereby becoming eligible to participate in Federal small business assistance programs, including SBA's financial assistance programs, economic injury disaster loans, and Federal procurement opportunities intended for small businesses.; (2) growing small businesses that are close to exceeding the current size standards for their NAICS 2012 industry may retain their small business status under NAICS 2017, and can continue participating in the above programs; and (3) Federal agencies will have a larger pool of small businesses from which to draw for their small business procurement programs because they will be able to define more accurately the principal purposes of their procurements under NAICS 2017, as required by 13 CFR 121.402(b).

Additional firms gaining small business status under NAICS 2017 may benefit under SBA's various business development and contracting programs. These include the 8(a) Business Development program and programs benefiting small businesses located in the historically underutilized business zones (HUBZones), woman owned small businesses (WOSBs), and service disabled veteran owned small businesses (SDVOSBs). Added competition may also result in lower prices for some Federal contracts reserved for small businesses, although SBA cannot quantify this benefit. Based on data for fiscal years 2013-2015, SBA estimates that approximately \$700,000 in Federal contracts could

be awarded to the newly defined small businesses under the proposed revisions of size standards due to the adoption of NAICS 2017.

Under SBA's 7(a) Loan and 504 Loan Programs, SBA will be able to guarantee more loans, although, in this case too, the number and amount cannot be estimated accurately. Based on data for fiscal years 2014-2016, SBA estimates that about two additional loans, totaling approximately \$200,000, could be made to newly defined small businesses under the proposed size standards using NAICS 2017. Under the Jobs Act, SBA can now guarantee substantially larger loans than in the past. Additionally, the Jobs Act established an alternative size standard for SBA's 7(a) and 504 Loan Programs for applicants that do not meet the size standards for their industries. The Jobs Act provides that if a firm applying for a 7(a) or 504 loan does not meet the size standard for its industry, it might still qualify if it has a tangible net worth that does not exceed \$15 million and an average net income after Federal income taxes (excluding any carry-over losses) for its preceding two completed fiscal years that does not exceed \$5 million. Pub. L. 111-240, 124 Stat. 504, title 1, subtitle A, part 1, section 1116 (Sep. 27, 2010). Thus, the updated size standards may result in an increase in SBA's loan guarantees to small businesses in the affected industries, but SBA cannot quantify this impact.

Newly defined small businesses will also benefit from SBA's Economic Injury Disaster Loan (EIDL) Program. Since this program is contingent on the occurrence and severity of a disaster, SBA cannot make a meaningful estimate of future EIDL benefit.

To the extent that newly defined small firms under NAICS 2017 could become active in Federal procurement programs, this may entail some additional administrative costs to the Federal Government associated with additional bidders for Federal small

business procurement opportunities. More firms may seek SBA's guaranteed loans. More will be enrolled in the SBA's Dynamic Small Business Search database. Since more firms will qualify as small, more may also seek certification as 8(a) or HUBZone firms, or qualify for WOSB, SDVOSB, and/or small disadvantaged business (SDB) status. However, it is important to point out that most business entities that are already registered in SAM will not be required to update their SAM profiles. However, it will be incumbent on registrants to review their profiles to ensure that they have the correct NAICS codes. SAM requires that registered companies review and update their profiles annually, and therefore, businesses will need to pay particular attention to the changes to determine if they might affect them. They will also have to verify and update, if necessary, their Representations and Certifications in SAM.

Among businesses in this group seeking SBA assistance, there could be some additional costs associated with compliance and verification of small business status and protests of small business status. These added costs are likely to be minimal because mechanisms are already in place to handle these administrative requirements.

The costs to the Federal Government may be higher on some Federal contracts under the higher revised size standards under NAICS 2017. With more businesses defined as small, Federal agencies might choose to set aside more contracts for competition among small businesses rather than using full and open competition. The movement from unrestricted to set-aside contracting will likely result in competition among fewer total bidders, although there will be a larger pool of small businesses to submit offers. In addition, higher costs may result when additional full and open contracts are awarded to HUBZone businesses because of a price evaluation preference.

The additional costs associated with fewer bidders, however, will likely be minor since, as a matter of law, procurements may be set aside for small businesses or reserved for the 8(a), HUBZone, WOSB, or SDVOSB Programs only if awards are expected to be made at fair and reasonable prices.

The revised size standards may have some distributional effects among large and small businesses. Although SBA cannot estimate with certainty the actual outcome of gains and losses among small and large businesses, there are several likely impacts. There may be a transfer of some Federal contracts from large businesses to small businesses. Large businesses may have fewer Federal contract opportunities as Federal agencies decide to set aside more Federal contracts for small businesses. In addition, some agencies may award more Federal contracts to HUBZone concerns instead of large businesses since HUBZone concerns may be eligible for price evaluation adjustments when they compete on full and open procurement opportunities. Similarly, currently defined small businesses may receive fewer Federal contracts due to the increased competition from more businesses defined as small under NAICS 2017. This transfer may be offset by more Federal procurements set aside for all small businesses. The number of newly defined and expanding small businesses that are willing and able to sell to the Federal Government will limit the potential transfer of contracts away from large and small businesses under the existing size standards. SBA cannot estimate with precision the potential distributional impacts of these transfers.

SBA's adoption of NAICS 2017 and resulting revisions to size standards is consistent with SBA's statutory mandate to assist small business by providing access to capital and credit, Government contracts, and management and technical assistance.

Updated size standards based on latest industry definitions ensure that Federal small business assistance is more effectively targeted to its intended beneficiaries. The Small Business Act states that “the Administrator shall ensure that the size standard varies from industry to industry to the extent necessary to reflect the differing characteristics of the various industries.” 15 U.S.C. 632(a)(3). With the adoption of the latest industry definitions in NAICS 2017, SBA’s size standards are more consistent with the differing characteristics among the various industries.

Executive Order 13563

A description of the need for this proposed regulatory action and benefits and costs associated with this action including possible distribution impacts that relate to Executive Order 13563 are included above in the Cost Benefit Analysis.

To engage interested parties in this action, SBA reached out to all Federal agencies advising them that the Agency plans to update its table of size standards to NAICS 2017, effective October 1, 2017, and that agencies must continue using the current size standards until that date. Adopting the updated size standards on October 1, 2017 is consistent with SBA’s adoptions of previous NAICS revisions at the beginning of the new fiscal year following the OMB’s January 1 effective date of NAICS revisions for Federal statistical agencies.

Unlike the previous NAICS revisions which SBA adopted for its size standards either through a direct final rule or through an interim final rule, for the adoption of NAICS 2017 revision, SBA is issuing this proposed rule and seeking comments to better engage the public in the process. SBA will also issue a press release on the publication of the proposed rule and update the “What’s New With Size Standards,” page on its web site

at www.sba.gov/size, asking interested parties to comment on the rule. SBA will thoroughly consider all public comments when developing the final rule.

Executive Order 12988

This action meets applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. The action does not have retroactive or preemptive effect.

Executive Order 13132

For purposes of Executive Order 13132, SBA has determined that this proposed rule, if adopted as proposed, will not have substantial, direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, SBA has determined that this proposed rule has no Federalism implications warranting preparation of a Federalism assessment.

Paperwork Reduction Act

For the purpose of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA has determined that this proposed rule would not impose any new reporting or record keeping requirements.

Initial Regulatory Flexibility Analysis

Under the Regulatory Flexibility Act (RFA), this proposed rule, if adopted, may have a significant impact on a substantial number of small businesses in some industries whose size standards have been revised. As described above, this rule may affect small businesses applying for Federal government contracts, loans under SBA's 7(a), 504, and

Economic Injury Disaster Loan Programs, and assistance under other Federal small business programs.

Immediately below, SBA sets forth an initial regulatory flexibility analysis (IRFA) of this proposed rule addressing the following questions: (1) What are the need for and objectives of the rule?; (2) What are SBA's description and estimate of the number of small businesses to which the rule will apply?; (3) What are the projected reporting, record keeping, and other compliance requirements of the rule?; (4) What are the relevant Federal rules that may duplicate, overlap, or conflict with the rule?; and (5) What alternatives will allow the Agency to accomplish its regulatory objectives while minimizing the impact on small businesses?

1. What are the need for and objective of the rule?

The Small Business Act requires that small business size standards vary from industry to industry reflecting the differing characteristics of the various industries. SBA uses the latest NAICS as a basis of industries definitions for its table of size standards. As part of its five-year review of and revisions to NAICS industry definitions, OMB published its latest NAICS revision, NAICS 2017, on August 8, 2017. According to the OMB's notice, Federal establishment and industry data for reference years beginning on or after January 1, 2017 should be published using NAICS 2017. This rulemaking proposes to amend SBA's small business size regulations to incorporate NAICS 2017 into its table of size standards. This not only makes SBA's size standards more reflective of the latest industry differences but also makes them more consistent with latest industry data the Agency uses to establish, review or adjust size standards. Updating size standards to the latest industry definitions also serves the SBA's mandate to review all

size standards and make appropriate adjustments to reflect market conditions under the Jobs Act.

2. What are SBA's description and estimate of the number of small businesses to which the rule will apply?

With the update of size standards to the latest industry definitions under NAICS 2017, Federal small business assistance is more effectively targeted to its intended beneficiaries. The adoption of NAICS 2017, if adopted as proposed, would result in increases in size standards for six industries and part of one industry under NAICS 2012 and decreases for two. The size standards for the rest of the 29 affected industries will remain unchanged. In industries whose size standards have increased due to the adoption of NAICS 2017, about 60 firms above the current size standards would qualify as small under the updated size standards, thereby making them eligible for Federal small business assistance programs. Based on the recent data, SBA estimates that approximately \$700,000 in Federal contracts and about \$200,000 in SBA loans could be awarded to the newly defined small businesses under the updated size standards. The updated size standards would enable more small businesses to maintain their small business size status for a longer period. In the two NAICS 2012 industries, about 3-4 firms below the current size standards would lose their small business size status under the proposed size standards. However, the program data suggests that this would not cause much impact on them. Currently, they are not participating in any small business programs. Additionally, in both industries, Federal contracting and SBA's loan activities are quite insignificant.

3. What are the projected reporting, record keeping and other compliance requirements of the rule?

The proposed size standard changes due to the adoption of NAICS 2017 impose no additional reporting or record keeping requirements on small businesses. However, qualifying for Federal small business contracting and other programs may require businesses to register in SAM and recertify in SAM that they are small at least once annually. Therefore, the newly qualified small businesses opting to participate in those programs must comply with SAM requirements. There are no costs associated with either SAM registration or annual recertification. Changing size standards alters the access to SBA's financial and other Federal programs that assist small businesses, but does not impose a regulatory burden because they neither regulate nor control business behavior.

4. What are the relevant federal rules, which may duplicate, overlap, or conflict with the rule?

Under section 3(a)(2)(C) of the Small Business Act, 15 U.S.C. 632(a)(2)(c), Federal agencies must generally use SBA's size standards to define a small business, unless specifically authorized by statute to do otherwise. In 1995, SBA published in the *Federal Register* a list of statutory and regulatory size standards that identified the application of SBA's size standards as well as other size standards used by Federal agencies (60 FR 57988 (November 24, 1995)). An agency may establish for its programs a size standard that is different from those established by SBA if approved by SBA's Administrator in accordance with 13 CFR 121.903. SBA is not aware of any Federal rule that would duplicate or conflict with establishing or updating size standards.

However, the Small Business Act and SBA's regulations allow Federal agencies to develop different size standards if they believe that SBA's size standards are not appropriate for their programs, with the approval of SBA's Administrator (13 CFR 121.903). The RFA authorizes a Federal agency to establish an alternative small business definition, after consultation with the Office of Advocacy of the U.S. Small Business Administration (5 U.S.C. 601(3)).

5. What alternatives will allow the Agency to accomplish its regulatory objectives while minimizing the impact on small entities?

By law, SBA is required to develop numerical size standards for establishing eligibility for Federal small business assistance programs. Other than varying levels of size standards by industry and changing the size measures, no practical alternative exists to the systems of numerical size standards. SBA considered continuing to use NAICS 2012 as a basis of industry definitions for its table of size standards. However, that would render SBA's table of size standards incompatible with Federal industry and establishment statistics and other databases.

List of Subjects in 13 CFR Part 121

Administrative practice and procedure, Government procurement, Government property, Grant programs— business, Individuals with disabilities, Loan programs— business, Reporting and recordkeeping requirements, Small businesses.

For the reasons set forth in the preamble, SBA proposes to amend 13 CFR part 121 as follows:

PART 121—SMALL BUSINESS SIZE REGULATIONS

1. The authority citation for part 121 continues to read as follows:

Authority: 15 U.S.C. 632, 634(b)(6), 662, and 694a(9).

2. In § 121.201, amend the table, “Small Business Size Standards by NAICS Industry” as follows:

- a. Remove the entries for 211111 and 211112;
- b. Add entries for 211120 and 211130;
- c. Remove the entries for 212231 and 212234;
- d. Add an entry for 212230;
- e. Remove the entry 333911;
- f. Remove the entry 333913;
- g. Add an entry for 333914;
- h. Add an entry for 335220;
- i. Remove the entries for 335221, 335222, 335224, and 335228;
- j. Remove the entries for 452111, 452112, 452910, and 452990;
- k. Add entries for 452210, 452311, and 452319;
- l. Add an entry for 454110;
- m. Remove the entries for 454111, 454112, and 454113;
- n. Remove the entries for 512210 and 512220;
- o. Add an entry for 512250;
- p. Remove the entries for 517110 and 517210;
- q. Add entries for 517311 and 517312;
- r. Remove the entries for 532220, 532230, 532291, 532292, and 532299;
- s. Add entries for 532281, 532282, 532283, 532284, and 532289;
- t. Remove the entry for 541711;
- u. Remove the entry for 541712;

- v. Add entries for 541713 and 541714;
- w. Add an entry for 541715;
- x. Revise the NAICS industry title of the entry for 721310 to read, “Rooming and Boarding Houses, Dormitories, and Workers’ Camps”; and
- y. Revise footnote 11 at the end of the table.

The additions and revisions read as follows:

§ 121.201 What size standards has SBA identified by North American Industry Classification System codes?

* * * * *

NAICS codes	NAICS U.S. industry title	Size Standards in millions of dollars	Size standards in number of employees
* * * * *			
211120	Crude Petroleum Extraction		1,250
211130	Natural Gas Extraction		1,250
* * * * *			
212230	Copper, Nickel, Lead, and Zinc Mining		750
* * * * *			
333914	Measuring, Dispensing, and Other Pumping Equipment Manufacturing		750
* * * * *			
335220	Major Household Appliance Manufacturing		1,500
* * * * *			
452210	Department Stores	\$32.5	
452311	Warehouse Clubs and Supercenters	\$29.5	
452319	All Other General Merchandise Stores	\$32.5	
* * * * *			
454110	Electronic Shopping and Mail-Order Houses	\$38.5	
* * * * *			
512250	Record Production and Distribution		250
* * * * *			
517311	Wired Telecommunications Carriers		1,500
517312	Wireless Telecommunications Carriers (except Satellite)		1,500

* * * * *			
532281	Formal Wear and Costume Rental	\$20.5	
532282	Video Tape and Disc Rental	\$27.5	
532283	Home Health Equipment Rental	\$32.5	
532284	Recreational Goods Rental	\$7.5	
532289	All Other Consumer Goods Rental	\$7.5	
* * * * *			
541713	Research and Technology in Nanotechnology ¹¹		1,000
541714	Research and Technology in Biotechnology (except Nanobiotechnology) ¹¹		1,000
541715	Research and Development in the Physical, Engineering, and Life Sciences (except Nanotechnology and Biotechnology) ¹¹		1,000
Except,	Aircraft, Aircraft Engine and Engine Parts ¹¹		1500
Except,	Other Aircraft Parts and Auxiliary Equipment ¹¹		1,250
Except,	Guided Missiles and Space Vehicles, Their Propulsion Units and Propulsion Parts ¹¹		1,250
* * * * *			

Footnotes

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11. NAICS codes 541713, 541714, and 541715 -

(a) “Research and Development” means laboratory or other physical research and development. It does not include economic, educational, engineering, operations, systems, or other nonphysical research; or computer programming, data processing, commercial and/or medical laboratory testing.

(b) For research and development contracts requiring the delivery of a manufactured product, the appropriate size standard is that of the manufacturing industry.

(c) For purposes of the Small Business Innovation Research (SBIR) and Small Business Transfer Technology (STTR) programs only, a different definition has been established by law. See 15 U.S.C. 638(e)(5) and section 3 of the SBIR and STTR policy directives available at www.sbir.gov.

(d) “Research and Development” for guided missiles and space vehicles includes evaluations and simulation, and other services requiring thorough knowledge of complete missiles and spacecraft.

* * * * *

Linda M. McMahon,

Administrator.

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